

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

On May 22, 1997, when claimant was stacking boxes while working on the night shift for the respondent, he stepped off a loading table and twisted his left knee. After the accident, claimant developed pain and discomfort in his left knee. He then reported the accident to his shift supervisor sometime during that particular night shift. The supervisor had claimant complete and sign an injury report before he could be referred by respondent to a doctor for medical treatment. The injury report required claimant to explain how the accident occurred that caused the injury. By the time the shift ended, claimant testified his knee was painful and had some swelling. At the time claimant completed the injury report, he testified he also requested respondent to provide medical treatment for his injury.

Respondent sent claimant to the company physician, Robert R. Brown, D.O., of Lenexa, Kansas. Dr. Brown saw claimant on two occasions and had claimant undergo an MRI examination. The MRI examination of claimant's left knee showed a posterior horn tear of the medial meniscus. Dr. Brown then referred claimant to orthopedic surgeon Lowry Jones, Jr., M.D., of Kansas City, Missouri. Claimant's previous right knee injury had been surgically treated by Dr. Jones on March 1, 1996.

Dr. Jones saw claimant on June 9, 1997. He also diagnosed claimant's left knee with a posterior horn tear of the medial meniscus. The doctor recommended arthroscopic surgery to repair the torn meniscus. But claimant did not accept surgery at that time. Claimant was in the process of changing jobs to manage a young group of rock musicians that were going to tour Europe. Claimant felt the surgery would interfere with the tour because post-surgery claimant would be required to walk up to six weeks on crutches. Dr. Jones' June 9, 1997, medical record noted that claimant should consider the surgical procedure. The doctor placed permanent restrictions on claimant's activities until claimant made a decision about the surgical procedure.

Claimant terminated his employment with respondent on June 30, 1997. He then went with the musical rock group to Europe. Claimant worked with the group in Europe until he returned to the United States in January, 1999.

On April 12, 1999, claimant was seen by Dr. Jones. At that time, claimant continued to have pain and discomfort in his left knee. After Dr. Jones examined claimant, he again recommended arthroscopic surgery, and claimant agreed with the doctor to progress with the surgery. But respondent and its insurance carrier denied claimant's request, arguing that claimant failed to serve upon the respondent a written claim for compensation within

200 days from the date of accident, or within 200 days after the date of last payment of compensation.¹

Respondent contends claimant's first written claim for compensation for the left knee injury was claimant's Application for Hearing filed with the Division of Workers Compensation on April 8, 1999. Respondent argues that the last medical treatment that claimant received was on June 9, 1997, when he saw Dr. Jones. This would be some 22 months before he filed his Application for Hearing on April 8, 1999, clearly outside the 200 day requirement. Respondent argues because claimant failed to provide respondent with a written claim for compensation within 200 days of this last medical treatment, his claim for benefits must be denied.

In contrast, claimant contends the injury report, that respondent required him to complete and sign on the date of his accident before he could be referred for the medical treatment, was a timely written claim for compensation.

A written claim need not take any specific form. But it must convey an intent on the part of the injured worker to claim compensation under the workers compensation law.² Claimant testified that the respondent required him to complete the injury report before respondent would refer him for the medical treatment he requested for his left knee injury. His testimony is uncontroverted. Uncontroverted evidence, which is not improbable or unreasonable, may not be discarded unless it is shown to be untrustworthy.³

The Appeals Board finds that claimant requested treatment for his injury and before that requested medical treatment was provided, the respondent required claimant to complete and sign an accident report. Accordingly, the Appeals Board concludes that the injury report completed by the claimant on the date of his left knee injury satisfies the requirement of K.S.A. 44-520a, as it is a writing that was made with the intention of claimant obtaining workers compensation benefits.

The issue of whether claimant's need for left knee surgery is related to the May 22, 1997, work-related accident was raised by the respondent in its application for review. But the respondent failed to address the issue in its brief. The Appeals Board finds the preliminary hearing record does not contain any evidence that claimant's activities after his May 22, 1997, accident aggravated or worsened his May 22, 1997, work-related left knee injury. Thus, the Appeals Board concludes claimant's current need for surgery is directly related to the May 22, 1997, accident.

¹See K.S.A. 44-520a.

²See Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973).

³See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Steven J. Howard's October 1, 1999, preliminary hearing Order should be, and it is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Frederick J. Greenbaum, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director